

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:10CR3078
)	
v.)	
)	MEMORANDUM AND ORDER
TIMOTHY LOWE FOLDEN,)	
)	
Defendant.)	

The defendant has filed a motion to review his detention, (filing no. 20). The defendant's motion states:

[T]he Defendant has been evaluated by Parallels in Lincoln, Nebraska. The evaluation has determined that the Defendant requires long term residential care in a facility treatment program with a controlled environment if available. If not, short term residential treatment would be warranted.

Filing No. 20, ¶ 2. The motion further explains the defendant no longer has any outstanding criminal cases pending in any other jurisdiction. Id. at ¶ 3.

The court has reviewed the evaluation report from Parallels, a copy of which will be filed under seal in the court's record, and has further considered the report of Pretrial Services dated July 28, 2010 (filing no. 11), the evidence adduced at the detention hearing held that date, and the court's records. Based on this evidence, the court will deny the defendant's motion for release to treatment.

Specifically, the court notes the defendant, who is now 42, began receiving drug and alcohol treatment at the age of 16. He was convicted on drug charges and sentenced by this court in September 2000, and thereafter served a 27-month prison term. However, upon release, the defendant violated the terms of his supervised release by using methamphetamine and marijuana and being terminated from a substance abuse treatment program for lack of compliance. The defendant was sentenced to an additional 33 months in prison on the supervised release violations, and while in BOP custody, completed the RDAP 500-hour drug

treatment program. The defendant was released from BOP custody in November 2004, and re-initiated his drug use upon release. The pending drug conspiracy charges date back to July 2008. See filing no. 1.

The defendant was arrested on state drug charges in September 30, 2009, was released on October 7, 2009, and then moved into his fiancé's home. After moving in with his fiancé, the defendant was not employed anywhere, was financially supported by his fiancé, and continued using marijuana until additional state drug charges were filed and he was placed on state supervision. In other words, despite his past drug treatment programs, the defendant did not stop using drugs even in response to criminal charges until motivated to do so by twice-weekly urine drug testing. In addition, the defendant has a history of failing to appear as ordered for court hearings, and there are inconsistencies between the Parallels report and the evidence received at the detention hearing.

The court acknowledges the defendant wants to be released to a drug treatment program pending trial, but based on the foregoing facts and the reasonable inferences drawn from those facts, the court is not convinced the defendant is requesting release because he wants to conquer his addiction, or that the defendant will benefit from participating in a drug treatment program at this time.

Accordingly,

IT IS ORDERED:

- 1) The defendant's motion to review detention, (filing no. 20), is denied.
- 2) The clerk shall file the Substance Abuse Evaluation by Parallels dated July 29, 2010 under seal.

August 26, 2010.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge